

TEAMING FOR SUCCESS

RALPH C. THOMAS III, ESQUIRE
GOVERNMENT CONTRACTS ATTORNEY - PARTNER
BARTON BAKER THOMAS & TOLLE LLP
MCLEAN, VA

INTRODUCTION: WHAT IS A TEAMING AGREEMENT

“An arrangement pursuant to which . . .

- A. Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- B. A potential prime contractor agrees with one or more other companies to have them act as its subcontractor under a specified government contract or acquisition program”

FAR 9.601

USDOE'10
EMPOWERING SMALL BUSINESS

11th Annual Small Business Conference & Expo
Georgia World Congress Center, Atlanta, GA. May 10-12, 2010

TEAMING AGREEMENT?

DETERMINING YOUR NEGOTIATION LEVERAGE

- Five (5) Reasons Why a Prime Would Be Interested in You
- Two (2) Questions to Ask to Determine Which Reason Applies to You

PRIMARY OBJECTIVE OF PARTIES IN NEGOTIATION

- Prime Contractor's Perfect World
- Subcontractor's Perfect World

“LET THE NEGOTIATIONS BEGIN” - NOT YET

- The Pre-Nup
- “There ain’t no good guy; there ain’t no bad guy; it’s just you and me and we just don’t agree
- Protecting What Comes Out of Your Mouth
- Advance Confidentiality Agreement

GETTING THROUGH THE FORMALITIES

- Getting it in Writing
- But Just What is it That You Have That's in Writing
- Memorandum of Understanding, Letter of Intent, Subcontract or Teaming Agreement

THE TEAMING AGREEMENT: A PROMISE OR A CONTRACT

- ▶ A Short Lesson in Contracts
- ▶ Gratuitous Promise
- ▶ Non-Binding Expression of Interest
- ▶ Agreement to Agree
- ▶ Obligation to Negotiate in Good Faith
- ▶ Obligation to Award a Subcontract

GETTING TO THE HEART OF THE MATTER

- Essential Terms of the Teaming Agreement
- Notice of Intent
- Protection of Intellectual Property
- Termination Clauses

TERMINATION CLAUSES

- ▶ Termination for Convenience

- ▶ Termination for Convenience -- in Disguise

IMPORTANCE OF DISCLOSURE CLAUSES: PREVENTING POST-AWARD SURPRISES

- Funny how things change once the contract is won
- Prime: “The Devil (Government) Made Me Do It”
- Protecting Yourself

PROSELYTZING SUB'S EMPLOYEES AS A BUSINESS STRATEGY: IMPACT ON TEAMING AGREEMENT

- During T.A. Negotiations
- Post-Award: During Subcontract Negotiations
- During Contract Performance
- Protecting Yourself

DISPUTES AND DAMAGES

- Inserting a Process in T.A. to Resolve Disputes
- Mediation vs. Litigation vs. Arbitration
- Measuring Damages
- Giving Teeth to the T.A.

WHEN THE SMALL BUSINESS IS THE PRIME IN A TEAMING AGREEMENT

- Redefining the T.A.'s Objective
- Limitation on Subcontracting Rule
- Affiliation
- Ostensible Subcontractor Rule

IF THE SUB IS LARGE: PERFORMING THE PRE-SIZE PROTEST REVIEW

- Perspective of the T.A.
- Scope of Work
- Affiliation/Ostensible Subcontract Rules Review
- The “Smell Test”

IF THE SUB IS FORMER 8(A) INCUMBENT: PERFORMING THE PRE-SIZE PROTEST REVIEW

- The Role of the T.A. and Technical Proposal
- Where Did Your Management Team Come From?
- Rethinking 51-49% Arrangements
- Segregation in Business Sense

FACTORING IN CERTAIN EXCEPTIONS TO AFFILIATION RULES?

Mentor Protégé Programs in General

- SBA Mentor Protégé Program
- Joint Ventures in General
- SBA 8(a) Approved Joint Ventures

SUMMARY

CONTACT INFORMATION

Ralph C. Thomas III

BARTON BAKER THOMAS & TOLLE LLP

1320 Old Chain Bridge Road

Suite 400

McLean, VA 22101

(703) 448-1810 x23

rthomas@bbmtlaw.com

Website: www.bbmtlaw.com